

Remarks/Arguments:

The present invention is a roofing material for automobile convertibles. Firstly, this unique roofing material combines conventional yarns for the interior fabric with a type of yarn not used heretofore for the outer fabric of convertible tops. The yarn forming the outer fabric is a polymeric coated core yarn which provides a woven design appearance on the surface, and further provides improved weatherability, cleanability, insulation to sound, and resistance to abrasion. Secondly, the woven outer layer is not coated or impregnated with waterproofing resin or sheet material, which normally results in an objectionable appearance. Rather, the outer layer is bonded to the inner layer by an adhesive layer which extends across and joins the entire surface between the inner layer and outer layer. It is this adhesive layer that, not only bonds the outer and inner layer together, but also provides the waterproofing effect.

The Prior Art

The Examiner has relied on U.S. Patent No. 5,431,979 to Dellinger et al. as her basis for a rejection of Claim 1 as being anticipated under 35 U.S.C. 102(b). Claims 2-8 are rejected as being unpatentable over Dellinger et al. in view of U.S. Patent No. 4,295,235 to Deitz. Claims 9-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dellinger in view of Deitz, and further in view of U.S. Patent No. 4,996,100 to Druckman et al. Finally, Claims 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dellinger et al. in view of Deitz, and further in view of U.S. Patent No. 6,557,590 to Swers et al.

The Dellinger et al. patent is directed to a cut-resistant tarpaulin for trucks. The outer coating is a "resin impregnated fabric", which is merely a woven polyester fabric which has been "resin impregnated" or coated with a polyurethane or a polyvinyl chloride sheet. The other layer 24 is a woven fabric formed of cut-resistant yarns. The outer and inner layers may be stitched together or intermediately bonded together with some kind of polyester film so that only part of the fabric is fixed and the remaining part of the fabric is "free to float or to move..." (Col. 1, Lines 63-66). This is an important aspect of the Dellinger et al. patent. Thus, Dellinger has neither of the features of the claimed invention.

Deitz is directed to a cushion construction that attempts to address the problem of waterproofing or easily drying outdoor seat cushions after exposure to moisture or rain. The

cushion is formed of a pair of opposed woven side layers (12,14) and a interlayer (32) of water impervious material. The interlayer is not bonded to the entire surface of the adjacent side layers (see figures 6,7). A fiber batting filler material (18) is positioned between the water impervious interlayer and the bottom side layer. The interlayer is attached along the peripheral edge portions only to the peripheral edge portions of the opposed side layers. The construction is completed by the application of a heat seal that melts and fuses the side layers and inter layer around the periphery only.

The Examiner's Rejections Under 35 U.S.C. 102(b) Should Be Withdrawn

Both the Patent Office and the CAFC (formerly the CCPA) have historically required that a single reference teach each and every element of a claim. That requirement is clear and unequivocal. Atlas Powder v. E.I. Dupont, 750 F.2d 1569, 224 USPQ 409 (CAFC 1984). James Berry Corporation v. Litton Industrial Products, 750 F.2d 1556, 225 USPQ 253 (CAFC 1985).

Claim 1 stands rejected under 35 U.S.C.(b) as being anticipated by the Dellinger Patent No. 5,431,979. As pointed out above, the outer layer of Dellinger et al. is not formed by polymeric coated yarns, but conventional polyester yarns in which the fabric is impregnated with resin after formation. This is different than the polymeric coated yarns of the present invention which exhibit a woven design appearance. The fabric of the present invention exhibits the woven design appearance and is very weatherable, cleanable, and resistant to abrasion. Yet, the waterproofing is actually provided by the adhesive intermediate layer which binds the outer layer and inner layer together completely across the surfaces thereof. The “completely across the surface thereof” is very important to provide the insulation. Intermittent attachment of the layers, each of which is a woven fabric, would not provide the necessary waterproofing effect.

Thus, the yarns of the outer layer are completely different, the outer layer fabric is not resin impregnated, and the adhesive middle layer extends across the entire surface between the inner layer and outer layer, bonding the inner and outer layers together. These features are not present in Dellinger et al. and, therefore, Dellinger et al. is an improper reference under 35 U.S.C. 102. Thus, lacking an outer layer formed of the same type of yarns and lacking a construction where the layers are bonded together across their entire surfaces, Dellinger et al.

cannot be a basis for proper rejection under 35 U.S.C. 102(b). The Examiner's rejection must, therefore, be withdrawn.

The Examiner's Rejection of Claims 2-13 under 35 U.S.C. 103 Should Be Withdrawn

As to Claims 2-8, the yarns used in the Deitz cushion are apparently polymeric coated; however, they are not utilized in a convertible top fabric, nor in any kind of fabric in which an outer and inner layer are bonded together by a layer of adhesive that extends completely across the interface or surface between the two layers. The Examiner asserts that it would have been obvious, in view of Deitz, to use a core yarn having an extruded polymeric sheath in the composite tarp of Dellinger et al. Applicant respectfully disagrees. Dellinger et al. already relies on a resin impregnated or coated fabric to accomplish this result. There would be no motivation for Dellinger et al. to use both coated core yarns and a resin impregnation or additional coating for waterproofing. Further, there is simply no suggestion in Dellinger that woven, coated yarns would provide a suitable alternative to impregnation or coating of the finished fabric. Modifying Dellinger et al. with Dietz may well destroy the desired floating, tarpaulin construction of Dellinger et al., violating the long standing holding that any modification that would destroy the invention of the reference cannot serve as a proper reference under 103(a). In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Therefore, the Examiner's rejections of Claims 2-4 and 6-7 should be withdrawn. Accordingly, Claims 5 and 8, which are dependent to Claims 3 and 7 respectively, should also be withdrawn.

As to Claims 9-10 and 13, the Examiner asserts that it would have been obvious to modify Dellinger et al. with both the Deitz and Druckman references to include alternating effect yarns to provide softness and an aesthetically pleasing fabric. Applicant again respectfully disagrees for the same reasons set forth in the paragraph above. Again, Dellinger et al. is directed to a cut-resistant tarpaulin for a truck. Dellinger does not recognize the softness, or hand, of the fabric or the aesthetic nature of the fabric as problems to be solved, and there is no suggestion or motivation whatsoever to provide such characteristics in a commercial tarpaulin. The Examiner has not explained why there would be any suggestion or motivation for such a modification. Druckman does not solve the basic deficiency of Dellinger et al.

Regarding the Examiner's rejection of Claims 9 and 11-12 with the further addition of U.S. Patent No. 6,557,590 to Swers et al., the Examiner has again provided no explanation why one would have been motivated to use "effect" yarns in a commercial tarpaulin construction. Swers et al. also does not solve the basic deficiencies in Dellinger et al. alone or in view of Dietz. Rather, the Examiner is piecing together references in an attempt to illustrate the various limitations of Applicant's claims. As the Federal Circuit has stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

Applicant respectfully submits that the pending application is now in condition for an immediate allowance with Claims 1-13, and such action is requested. If any matter remains unresolved, Applicant's counsel would appreciate the courtesy of a telephone call to resolve the matter.

Respectfully submitted,



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